

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHRIS BARKLEY, No. C 10-5389 CW (PR)
Petitioner, ORDER CONSTRUING REQUEST FOR
v. EXTENSION OF TIME AS TIMELY
JAMES NUEHRING, Warden, NOTICE OF APPEAL; DIRECTING
Respondent. CLERK TO TRANSMIT FILE TO THE
(Docket no. 20)

On September 30, 2012, the Court issued an order denying on the merits the instant pro se petition for a writ of habeas corpus, denied a certificate of appealability and entered judgment in favor of Respondent. Docket nos. 17 & 18.

On October 30, 2012, Petitioner, who is incarcerated in Tutwiler, Mississippi, signed, and prison officials deposited in the mail, a request for an extension of time to file a notice of appeal. Docket no. 20.

Applying the mailbox rule and liberally construing Petitioner's request, the Court construes the request as a timely-filed notice of appeal. See Fed. R. App. Proc. 4(c) ("If an inmate confined in an institution files a notice of appeal . . . the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing."); Andrade v. Attorney General, 270 F.3d 743, 752 (9th Cir. 2001), reversed on other grounds by Lockyer v. Andrade, 538 U. S. 63 (2003) (holding court may consider a timely motion for extension of time the functional equivalent of a notice of appeal).

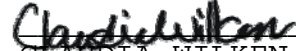
The Clerk of the Court shall transmit a copy of this Order,

1 together with the case file, to the Ninth Circuit.

2 This Order terminates Docket no. 20.

3 IT IS SO ORDERED.

4 Dated: 11/8/2012



CLAUDIA WILKEN

UNITED STATES DISTRICT JUDGE

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